

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing 23 March 2005 (23-03-2005)
(day/month/year)

Applicant's or agent's file reference
83211-4

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/CA2004/002167

International filing date (day/month/year)
20 December 2004 (20-12-2004)

Priority date (day/month/year)
26 March 2004 (26-03-2004)

International Patent Classification (IPC) or both national classification and IPC

Applicant
CRYSTALLON SYSTEMS INC. ET AL

1. This opinion contains indications relating to the following items :

- | | |
|--|---|
| <input checked="" type="checkbox"/> Box No. I | Basis of the opinion |
| <input type="checkbox"/> Box No. II | Priority |
| <input type="checkbox"/> Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> Box No. V | Reasoned statement under Rule 43bis.1(a)(I) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement. |
| <input type="checkbox"/> Box No. VI | Certain documents cited |
| <input checked="" type="checkbox"/> Box No. VII | Certain defects in the international application |
| <input checked="" type="checkbox"/> Box No. VIII | Certain observations on the international application |

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

WRITTEN OPINION
Due Jan. 26/06
Desk: Jan. 25/06

Name and mailing address of the ISA/CA
Canadian Intellectual Property Office
Place du Portage I, C114 - 1st Floor, Box PCT
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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/CA2004/002167

Box No. I Basis of this opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language which it was filed, unless otherwise indicated under this item.

 ☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of :
 - a. type of material

 ☐ a sequence listing

 ☐ table(s) related to the sequence listing
 - b. format of material

 ☐ in written format

 ☐ in computer readable form
 - c. time of filing/furnishing

 ☐ contained in the international application as filed.

 ☐ filed together with the international application in computer readable form.

 ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statement that the information in the subsequent or additional copies is identical to that in
4. Additional comments :

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/CA2004/002167

Box No. V **Reasoned statement under Rule 43bis.1(a)(I) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims <u>1-76</u>	YES
	Claims _____	NO
Inventive step (IS)	Claims _____	YES
	Claims <u>1-76</u>	NO
Industrial applicability (IA)	Claims <u>1-76</u>	YES
	Claims _____	NO

2. Citations and explanations :

Reference is made to the following documents:

D1: CA 2406738 A1 (PAPANDREAS et al.) 25 October 2001 (25-10-2001)

D2: Londergan et al., *Lotus Notes Release 4 For Dummies* (Foster City: IDG Books Worldwide, 1996)

D3: WO 01/52153 A1 (RAVEIS) 19 July 2001 (19-07-2001)

Novelty

The subject matter of claims 1 to 76 is considered to be novel, thus fulfilling the requirements of **Article 33(2)**.

Inventive step

Claims 1, 37 to 41, 70, and 71 describe a method, concepts, software, and apparatuses for managing referrals that lack an inventive step in view of the system for managing dental records taught in D1 (abstract; figure 7). D1 (page 5) teaches a dental record system comprising a database that is accessible via a computer network. In response to a first set of signals from the dentist's computer, information (e.g. a referral) is stored in the database (pages 6 and 8 to 10). In response to a second set of signals from one of the connected computers, a patient dental record or other entry satisfying certain criteria is displayed at the computer (pages 13 and 17). D1 (pages 18, 19, 23, and 24) teaches that personnel other than the dentist that created the record, and even the patient, may search for, access, and modify certain fields of a record. Although D1 does not teach that the system is used exclusively for managing referrals, such an administrative detail does not patentably distinguish the presently claimed subject matter over the prior art; it would have been obvious to a skilled technician to use the system taught in D1 to manage referrals if they so desired.

The presently claimed subject matter similarly lacks an inventive step in view of the Lotus Notes software package described in D2 (page 10). D2 (pages 12, 136, 162, 163, and 278 to 285) describes the software package as permitting one user to create a record in a database, and permitting other users to search for, access, and sometimes modify the record. The fact that the data stored in the records of the presently claimed subject matter pertains exclusively to referrals does not patentably distinguish the presently claimed subject matter.

D3 (abstract; figure 1; pages 3, 5, 15, 18, 19, and 53) also teaches a computerized system that permits users to make, search for, access, and modify database entries.

Claims 2 to 36, 42 to 69, and 72 to 76 are dependent on one of the above claims and fail to overcome the objections made for that claim.

(CONTINUED IN SUPPLEMENTAL BOX)

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted :

The application is directed to a method for automating or computerizing the administrative procedure of one doctor making patient referral to another doctor (pages 1 to 2). The first doctor makes an entry representing the referral in a database via a computer network; other doctors can search, access, and update the entries. No inventive new hardware, software, or technology is taught; instead, known computer and database technology are being used in the manner in which was intended.

Therefore, in certain jurisdictions, the subject matter of claims 1 to 76 would be considered to fall into the category of computer programs to the extent that **Article 34(4)(a)(i)**, and **Rules 43bis.1(b)** and **67.1(vi)** would require no written opinion to be given. This holds true for all of the claims, regardless of the form they take; the claims merely describe the introduction of known computer-related subject matter into an administrative procedure. In addition, certain jurisdictions would consider the subject matter of claims 37, 39, and 70 to be of such an abstract character that **Rule 67.1(iii)** would not require a written opinion for those claims, and the subject matter of claims 70 and 71 to be mere presentations of information such that **Rule 67.1(v)** would not require a written opinion for those claims.

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made :

- The wording of claim 38 does not make it perfectly clear that the codes are stored within the computer-readable medium.
- Although claims 40 and 41 describe apparatuses, it is not clear where the various claimed elements are located within the apparatus, how they are coupled to and interact with each other, or how they constitute the overall apparatus. In addition the apparatus of claim 41 includes various "filters", "interfaces", and "facilities" that appear to actually be data structures, programs, or some other abstract concept; abstract concepts cannot constitute machine or system components. (On the other hand, computer-readable media storing data or software can constitute the components of a machine or system.)
- For the reasons given above, claims 38, 40, and 41 fail to comply with **Article 6**. Claims 42 to 69, which depend upon claim 41, similarly fail to comply with **Article 6**.
- The nature of the claimed subject matter is obscured by the multiplicity of claims; the claims therefore fail to comply with **Rule 6.1(a)**.
- The grouping of independent claims 70 and 71 and dependent claims 72 to 76 is not the most logical or practical way possible; these claims therefore fail to comply with **Rule 6.4(c)**. A more practical arrangement would be to have the subject matter of independent claim 71 follow the grouping of the subject matter of independent claim 70 and dependent claims 72 to 76.
- The unreasonable number of dependent claims, particularly the number of dependent claims in the groupings 2 to 36 and 42 to 69, leads to the claims failing to comply with **Rule 13.4**.
- A document is incorporated by reference on page 1, line 5.
- Claim 13 states "at at least one" instead of "at least one".

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of Box No. V

The subject matter of claims 1 to 76 lacks an inventive step in view of any one of D1, D2, or D3, and therefore fails to comply with **Article 33(3)**.

Industrial applicability

The subject matter of claims 1 to 76 is considered to be industrially applicable, thus fulfilling the requirements of **Article 33(4)**.